

**Public Hearing**  
**Trustworthy Electronic Document or Record**  
**Preservation**

Office of the Secretary of State  
1500 11<sup>th</sup> Street  
1<sup>st</sup> Floor – Multipurpose Room  
Sacramento, California 95814

**January 24, 2011 10:00 a.m.**



**DEBRA BOWEN** | SECRETARY OF STATE | STATE OF CALIFORNIA  
1500 11th Street, 6th Floor | Sacramento, CA 95814 | Tel (916) 653-7244 | Fax (916) 653-4620 | [www.sos.ca.gov](http://www.sos.ca.gov)

## Public Hearing on Proposed Regulations

### Notice/Agenda

#### Schedule of Meeting

January 24, 2011, 10:00 a.m.

#### Location

Office of the Secretary of State  
1500 11<sup>th</sup> Street  
1<sup>st</sup> Floor – Multipurpose Room  
Sacramento, California 95814

Pursuant to Government Code section 11346.8, notice is hereby given that a public hearing will be held to give interested persons an opportunity to express their views regarding the proposed regulations identified below.

1. Trustworthy Electronic Document or Record Preservation
  - a) Introductory Remarks
  - b) Public Comment on the Proposed Regulations for Trustworthy Electronic Document or Record Preservation (5 minutes for each speaker)
  - c) Adjournment

For more information about the proposed regulations, please visit [www.sos.ca.gov](http://www.sos.ca.gov).

Members of the public are encouraged to submit written comments on agenda items. Written comment should be sent by US mail to the address above or by email to [theresa.finger@sos.ca.gov](mailto:theresa.finger@sos.ca.gov). Those wishing to provide oral comment at a meeting should complete a speaker's card upon arrival. In all cases, the presiding officer reserves the right to impose time limits on presentations as may be necessary to ensure that the agenda is completed. Those wishing to provide an extended statement should submit a request via the email address above or contact Theresa Finger at (916) 653-7244 at least 24 hours prior to the meeting.

## APPEARANCES

### Secretary of State Staff:

Lowell Finley, Moderator

Kaye Kaufman, Special Projects Analyst

Eric Kapucinski, Staff Information Systems Analyst (Specialist)

Sulema Valencia, Project Management Student Assistant

### Attendees:

James Wheeler, Sacramento County

Corinna Zollars, Sacramento County

Donna Johnston, County Records Association

Stephen Ave, Placer County

Andria Chernis-Giorgi, Secretary of State

Jessica Herrick, California State Archives

Charles Booz, Knowledge Dee Solutions and ARMA Chapter Sacramento

Ramona Gutierrez, Department of General Services

Rebecca Wendt, California State Archives

Tina McVay, Central Contra Costa Sanitary District

Secretary of State  
Public Hearing  
Trustworthy Electronic Document or Record Preservation  
January 24, 2011

Name/Address	Business/Organization Name	Do you wish to stand and make an oral comment?
James Wheeler 700 H Street, Suite 0270 Sacramento Ca 95814	County of Sacramento	No.
Corinna Zollars 799 G Street Sacramento CA 95814	County of Sacramento	No
DONNA JOHNSON 433 2ND STREET YUBA CITY, CA 95991	COUNTY RECORDS ASSOCIATION	NO
STEPHEN AVE 2954 RICHARDSON AUBURN CA 95603	PLACER COUNTY	NO
ANDRIA CHERNIS-GIOREI BPD/BE RECORDS		NO
Jessica Herrick Archives	Cal State Archives	No
CHARLES BOOE	SAC ARMTA	Yes
Ramona Gutierrez	Dept. of General Services	No
Rebecca Wendt State Archives	CA State Archives	No
Tina McVay 5019 Imhoff Place Martinez Ca 94553	Central Contra Costa Sanitary District	No

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      Sacramento Chapter
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  - a.   James Wheeler, Sacramento County
- IV.    Adjournment

I.      Introductory Remarks

The Moderator, Lowell Finley, made the introductory remarks. Attached is a copy of his script (next page).

**Proposed Regulations  
Trustworthy Electronic Document or Record Preservation  
Public Hearing**

**January 24, 2011, 10:00 a.m.  
Office of the Secretary of State  
1<sup>st</sup> Floor Multipurpose Room**

**Moderator Script**

**Intro**

- ❑ Good morning and thank you for coming.
- ❑ My name is Lowell Finley, Deputy SOS, Voting Systems Technology & Policy for the Secretary of State, and I will be moderating the proceedings today.
- ❑ It is 10:00 a.m. on Monday, January 24, 2011. We are meeting in the multi-purpose room of the California Secretary of State building located at 1500 11th Street, Sacramento, California.
- ❑ This public hearing is designed to receive public comments on the proposed rulemaking action by the Secretary of State for “Trustworthy Electronic Document or Record Preservation” written by the Secretary of State’s office, in consultation with the Department of General Services, under the authority of Government Code 12168.7.
- ❑ The Secretary of State has proposed new regulations adopting standards for the electronic preservation of permanent and nonpermanent records. The Secretary of State proposes to add sections 22620.1 through 22620.8 to Chapter 15 of Title 2 of Division 7 of the California Code of Regulations.
- ❑ Under the rulemaking provisions of the California Administrative Procedure Act, this is the time and place set for the presentation of

statements, arguments and contentions, orally or in writing, for or against the Secretary of State's regulations, notice of which has previously been both published and sent by mail or Email to interested parties.

- ❑ This is a quasi-legislative hearing, in which the Secretary of State carries out a rulemaking function delegated to it by the Legislature. Witnesses presenting testimony at this hearing will not be sworn in nor will we engage in cross-examination of witnesses. We will take under submission all written and oral statements submitted or made during this hearing. We will not respond to these comments today, but we'll do so in writing in the Updated or Final Statement of Reasons.
- ❑ This entire Administrative Procedures Act rulemaking hearing will be recorded and meeting minutes will be taken.
- ❑ The minutes of this hearing and all exhibits and evidence presented during the hearing will be made part of the rulemaking record. If you brought written comments with you to submit during the hearing today, please give them to Ms. Valencia, at this time, if you have not already done so.
- ❑ The record for this hearing will be kept open until close of business today, January 24, 2011, in order to receive additional relevant evidence in writing from interested parties. Written comments will be accepted until 5 p.m. today at the Administration office on the sixth floor of this building. Written comments submitted today should be made to the attention of Theresa Finger. You may also Email an electronic copy to [theresa.finger@sos.ca.gov](mailto:theresa.finger@sos.ca.gov) by 5 p.m. today.

## **Housekeeping**

Before we get started, I'd like to take a moment to take care of some housekeeping items.



- As you entered the room, you were all offered an attendance sheet to enter your name and a space to indicate if you wish to stand up and make oral comments on the proposed regulations. We will listen to oral comments from persons in the order they signed the attendance sheet. After we hear from everyone who signed in, we will hear from any latecomers or anyone else who wishes to be heard.
- We strongly encourage all persons attending the hearing to complete the attendance sheet, even if you do not intend to testify today. Anyone on the attendance sheet will receive notice of any changes to the proposed regulations prior to the final adoption. Any such notice will be sent to
  - 1) everyone who submits written comments during the written comment period, including those written comments submitted today;
  - 2) everyone who testifies today; and,
  - 3) everyone who asks for such a notification.

While no one will be excluded from participation in these proceedings for failure to identify themselves, the names and addresses on the attendance sheet will be used to provide the notice.

- If you have not yet signed the attendance sheet and you now wish to do so, please raise your hand.
- When you come up to speak, we ask that you do certain things so that the audience may hear you and we can properly capture the information on the tape recorder so that your comments are entered in the record.
- First, we ask you to come to the table here at the front when you are called to speak. Second, please begin by stating your name and identifying the organization you represent, if any. And tell us the section number of the particular regulation you want to discuss. Lastly,

please speak clearly at a regular speed and loud enough for the recorder.

- ❑ At this point, the rulemaking record includes five items. Item 1 is the form STD.400. Item 2 is the notice of the proposed action, which was published in the California Regulatory Notice Register on December 10, 2010. Item 3 is the expressed terms of the proposed action to make additions to the California Code of Regulations. Item 4 is the Statement of Reasons for the proposed rules. Item 5 is the form STD.399. And, Item 6 will be created, which will contain all written comments that are submitted up through 5 p.m. today.
- ❑ These regulations were duly noticed more than 45 days prior to today's hearing. Copies of the notice, together with the regulations, were mailed or E-mailed to all interested parties who had requested rulemaking notices.

### **Public Comment Period**

- ❑ We will now take oral comments, on the proposed regulations. In the interests of time, if you agree with comments made by a prior speaker, simply state that fact and add any new information you feel is pertinent to the issue.
- ❑ I'll announce the order of the speakers two or three people in advance, so please be prepared to speak when the person in front of you concludes their remarks.
- ❑ So that we can accommodate everyone who wishes to speak, I'd encourage people to not be repetitive. If someone has already made the comments you were intending to make, you may simply want to give your name and associate yourself with their remarks. That will help

ensure that people with new ideas and comments have the opportunity to address the panel.

- ❑ While speakers are more than welcome to pose questions that they hope the Secretary will consider before reaching a decision, neither I or nor the presenters today will be permitted to respond to questions posed during the public comment period.
- ❑ I want to remind everyone that any comments you make here today or any comments you submit in writing are part of the public record and will be disclosed to anyone who makes a Public Records Act request.
- ❑ Once more, this is a public hearing, not a debate, and I want to remind and encourage everyone to please be respectful of everyone's time, opinions, and point of view.
- ❑ With that, let's begin the public comment portion of the program.
- ❑ May I get the attendance list?
- ❑ First, we'll hear from.... And after that we'll have ...

## II. Public Comments

- a. Charles Booz, President of the local chapter of Association for Records Managers and Administrators (ARMA), commented on the proposed legislation. Since he did not provide a written copy of his comments, Sulema Valencia (Secretary of State staff) transcribed his comments (next page).

Charles Booz comments on January 24, 2011 as transcribed by Sulema Valencia:

“My name is Charles Booz, and I’m on the board of directors of the Sacramento ARMA chapter. This is the second public hearing that you have on this matter. I noticed that in your comments you did not discuss the prior rulemaking effort. My question is, ‘Will the testimony and all written statements from the prior hearing be carried over to this second effort?’ And, I encourage you to do so.

There were many very important comments that were made by a very wide array of testimony. It actually, you had quite a large crowd the last time you attempted to do this rulemaking and there was a follow-up meeting from that at which quite a few people I believe probably in the number of 20-25 people either were present physically or present telephonically to discuss the advocacy of the rulemaking, the parameters, etc.

The ARMA organization, which is the association of records managers and administrators, which is the premier records management organization internationally, basically has two objections to this rulemaking.

First objection is that the law itself and the, shall I say, methodology set up for the rulemaking follow up the statute is based technologically and procedurally in very old and very static science, library science, technology science, and the methodology is simply archaic. What we have here is, for example, a reference to an AIIM ISO: 15489 that itself is dated now going on two years. Instead of looking to the goals we are trying to achieve with the kind of trusted system that we all agree is a good thing, trusted systems are a good thing. Being able to preserve records are a good thing. Record integrity and preserving that is a good thing. The question is, ‘How do you do that technologically, but more over in this setting how do you do it methodologically?’

Then Senator Bowen in the late 90’s undertook the author, a law, which would bring about some preservation and some standard methodological approach. Unfortunately, in my personal opinion, as I was present during that bill being carried, was that the research that went into it was very shallow. I spoke with, on numerous occasions, Senator Bowen’s staff, and they simply were not well informed. They had no expertise in this area; they had no basis for understanding what they were doing. And, I expressed that at the time. Nonetheless, staff went forward with the idea that they could essentially hang their responsible trusted system desires on a specific organization promulgating specific approaches to this question of trusted systems and to the question of records preservation.

Now it is true that I represent a different organization than the AIIM, or the Association of Information and Imaging Managers, but that is not the issue. The issue is that no single organization has a wrap on the truth telling here, or of the approach, or on the standard. Standards are always changing. What is not changing is the desire for trusted systems. What is not changing is the courts requirement that a record have validity, that a record be authentic. Those are the kinds of goals that we should be trying to achieve in this rulemaking. But unfortunately, we are not doing that.

This rulemaking is based upon a 10-12 year old law, which at its inception was flawed. So today the Secretary of State tells us that her hands are tied. She must go forward with the rulemaking because the legislature has demanded it in the law that was passed, and apparently this is true. And, to correct this problem, there will have to be an amendment to this law or a new law that takes it in a different direction.

This rulemaking was attempted before, recently, within the last two years there have been many individuals of local governments, state government, different organizations, different specialists in this area all have put forward testimony, and all is in the previous record. Again, which I encourage, be included in this record.

I don't know the extent of which the Secretary of State's hands are simply tied and she must proceed to implement a rule even though the basis for that rule is flawed. I believe that any fair testimony from a fair sampling of experts in this area would reveal that the technology is old; the basis of the law was looking to a specific standard that is now archaic. And, unfortunately, the senate staff at the time the law was put together was ill informed and not properly trained or capable of arriving at a clear understanding of the variables of trusted systems and records preservation.

So with that I conclude and hope that the Secretary of State will find it helpful for her organization to go back to the legislature and seek to amend the law such that it points to the goals of records preservation and not to any specific standard or any specific organization in it's guidance as to how the rulemaking needs to be done. With that, I thank you."

III. Written Public Comments

- a. James Wheeler, from Sacramento County, was present at the public hearing and submitted the following comments (next page).

Internal Services Agency

Clerk/Recorder Department

Craig A. Kramer  
County Clerk/Recorder



County of Sacramento

Terry Schutten, County Executive  
Mark Norris, Agency Administrator

PROPOSED REGULATIONS FOR ELECTRONIC DOCUMENT OR RECORD PRESERVATION

The following is a list of questions and concerns that have been brought forth by a cooperative of Sacramento County departments, including the County Clerk/Recorder's Office, Office of Finance, Office of Communications and Information Technology and County Counsel.

QUESTIONS & CONCERNS

- What is the definition of "Official Record" as referred to in the regulations? (Section 23020)
- California Records' Offices utilize TIFF format for electronic document storage. The proposed regulations would mandate all Records to perform a very costly conversion to the specified PDF-A format. What funding mechanism is available for this conversion? (FAQ's)
- If a document management system has already been implemented, is there a certification process to test for its trustworthiness? (Section 23070—Trusted System)
- Is there a window of time to obtain a trusted system?
- Many, if not most, of the counties utilize a Kodak Archiwewriter (an industry standard) to create microfilm from the digital images for the Official Record. Because the Archiwriters do not support PDF-A format, how should the counties go about creating their film archives? Is TIFF format acceptable as a "transitional" format?
- With County Records moving forward with electronic recording and electronic submission of documents, are these records exempt from the regulations as long as the Official Record is kept in microfilm format? (FAQ's)
- What are the repercussions of not being in compliance with the regulations?

*Will the California Courts continue to take evidentiary  
submittals in their native formats?*



#### IV. Adjournment

Lowell Finley concluded the Public Hearing by making the following closing remarks (next page).

## **Close**

- ❑ Is there anyone who wishes to testify on the regulations that has not already done so?
- ❑ Hearing no requests, I hereby close this public hearing to oral testimony.
- ❑ We have now finished our agenda for today, and I would like to thank the presenters, the audience and the Secretary of State staff for being here to participate in the hearing. We appreciate your assistance in developing these regulations.
- ❑ As I mentioned earlier, anyone who wishes to submit written testimony can do so by submitting a hard copy to the Administration office on the sixth floor, or by E-mailing an electronic copy to [theresa.finger@sos.ca.gov](mailto:theresa.finger@sos.ca.gov) by 5 p.m. today.
- ❑ This hearing is now adjourned.